

Message Text

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ACTION SR-02

INFO OCT-01 IO-10 ISO-00 ORM-01 L-02 SS-15 NSC-05 PRS-01

CIAE-00 INR-07 NSAE-00 AF-06 ARA-10 EA-10 EUR-12

NEA-09 /091 W

----- 049757

R 071006Z MAY 75

FM USMISSION GENEVA

TO SECSTATE WASHDC 2692

UNCLAS GENEVA 3280

FOR KELLOGG AND SCHWEBEL

EO 11652: NA

TAGS: SREF

SUBJ: TERRITORIAL ASYLUM - MAY 6

1. AT TWELFTH MEETING PROPOSAL TO DELETE ARTICLE
1(2) SUPPORTED BY SWEDEN, MEXICO, UK AND INDIA;
OPPOSED BY ITALY, MALI, AUSTRALIA, FRANCE AND USSR.
PROPOSAL TO DELETE ADOPTED 8-7(US)-1.

2. ARTICLE 2 ADOPTED AFTER FOLLOWING DECISIONS:
(A) PARAGRAPH 1 - CHANGE "ENTITLED TO" TO "ELIGIBLE
FOR". CONSENSUS.

(B) PARAGRAPH 1(A) - USSR PROPOSAL TO ADD AFTER
"POLITICAL OPINION" THE WORDS "THE DEFENSE OF
INTERESTS OF LABORERS, SCIENTIFIC ACTIVITY OR
NATIONAL LIBERATION STRUGGLES" REJECTED 4-12(US)-3.

(C) PARAGRAPH 1(A) - NIGERIAN PROPOSAL TO ADD AFTER
"POLITICAL OPINION" THE WORDS "NOT CONTRARY TO
PURPOSES AND PRINCIPLES OF UN" REJECTED 4-12(US)-2.

(D) PARAGRAPH 1(A) - NIGERIAN PROPOSAL TO ADD AFTER
"POLITICAL OPINION" THE WORDS "INCLUDING THE STRUGGLE
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AGAINST COLONIALISM AND APARTHEID" ADOPTED 16-2(US)-1.

(E) PARAGRAPH 1(B) - SWEDISH PROPOSAL DELETE THIS
SUBPARAGRAPH REJECTED 6-11(US)-1.

(F) PARAGRAPH 1(B) - UK PROPOSAL TO REPLACE SUB-
PARAGRAPH BY WORDS "PROSECUTION OR PUNISHMENT FOR
POLITICAL OFFENSES" REJECTED 4-5(US)-6.

(G) PARAGRAPH 1(B) - AUSTRALIAN PROPOSAL TO DELETE
"SEVERE" ADOPTED 15(US)-1-0.

(H) PARAGRAPH 2 - PROPOSAL OF SEVERAL EXPERTS
DURING FIRST READING TO REPLACE "SHALL NOT APPLY TO"
BY THE WORDS "MAY NOT BE INVOKED BY" REJECTED
6(US)-9-5.

(I) PARAGRAPH 2 - PROPOSAL OF USSR AND OTHER EXPERTS
TO REPLACE "IS STILL LIABLE TO PUNISHMENT FOR" BY
WORDS "HAS COMMITTED" ADOPTED 6-5(US)-8. WE, OF
COURSE, WERE CONCERNED BY STATUTE OF LIMITATIONS
PROBLEM.

(J) PARAGRAPH 2(A) - UKRANIAN PROPOSAL TO ADD TO
LIST OF OFFENSES "GENOCIDE, WAR PROPAGANDA AS WELL
AS OTHER INTERNATIONAL CRIMES IN INTERNATIONAL
INSTRUMENTS DRAWN UP OR TO BE DRAWN UP" REJECTED
4-7(US)-7.

(K) PARAGRAPH 2(B) - MANY EXPERTS HAD PROPOSED OR
SUPPORTED REFORMULATION OF 2(B): "A SERIOUS COMMON
CRIME ACCORDING TO THE LAWS AND REGULATIONS OF THE
CONTRACTING PARTY GRANTING ASYLUM". ADOPTED BY
CONSENSUS.

3. AT THIRTEENTH MEETING CHAIRMAN RULED THAT US
PROPOSAL FOR ARTICLE 3 WAS AN AMENDMENT TO THE DRAFT
CONVENTION AND SHOULD BE CONSIDERED FIRST. OPPOSI-
TION CENTERED ON REJECTION AT FRONTIER IN SECOND
SENTENCE. FRANCE AND OTHERS SOUGHT REMOVAL OF
SECOND SENTENCE FROM ARTICLE 3 BECAUSE THE OBLIGATION
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IT IMPOSED ON THE STATE OF ASYLUM WAS TOO LIMITED;
THE USSR SOUGHT DELETION OF THE SENTENCE BECAUSE THE
OBLIGATION WAS TOO SEVERE. PROPOSAL TO DELETE
REJECTED 4-10(US)-1. SWEDISH PROPOSAL TO DELETE
"USE ITS BEST ENDEAVORS TO", EFFECT OF WHICH WOULD
HAVE BEEN TO MAKE ADMISSION AT FRONTIERS OBLIGATORY,
FAILED BY A VOTE OF 7-7(US)-7.

4. US PROPOSAL FOR ARTICLE 3 ADOPTED BY VOTE OF 8(US)-1-5 WITH FOLLOWING DRAFTING CHANGES:

(A) REPLACE "ENTITLED TO" BY "ELIGIBLE FOR".

(B) DELETE "DIRECTLY OR INDIRECTLY".

(C) REPLACE LATTER PART OF FIRST SENTENCE, BEGINNING "WITH RESPECT TO WHICH" WITH WORDS "WHERE HIS LIFE OR FREEDOM WILL BE THREATENED FOR ANY OF THE REASONS MENTIONED IN ARTICLE 2".

5. TWO ADDITIONAL PARAGRAPHS ADDED TO ARTICLE 3:

(A) "THE BENEFITS OF PARAGRAPH 1 MAY NOT BE CLAIMED BY PERSONS SEEKING ASYLUM WHOM THERE ARE REASONABLE GROUNDS FOR REGARDING AS A DANGER TO THE SECURITY OF THE COUNTRY IN WHICH HE IS, OR WHO, HAVING BEEN CONVICTED BY A FINAL JUDGMENT OF A PARTICULARLY SERIOUS CRIME, CONSTITUTES A DANGER TO THE COMMUNITY." THIS PROVISION, PRACTICALLY VERBATIM FROM ARTICLE 33(2) OF 1951 REFUGEE CONVENTION, ADOPTED 15(US)-0-2.

(B) "SHOULD A CONTRACTING STATE DECIDE IN ANY CASE THAT AN EXCEPTION TO THE PROVISIONS OF PARAGRAPH 1 OF THIS ARTICLE WOULD BE JUSTIFIED, IT SHALL CONSIDER THE POSSIBILITY OF GRANTING TO THE PERSON CONCERNED, UNDER SUCH CONDITIONS AS IT MAY CONSIDER APPROPRIATE, AN OPPORTUNITY, WHETHER BY PROVISIONAL ASYLUM OR OTHERWISE, OF GOING TO ANOTHE STATE". THIS PROVISION, BASED ON ARTICLE 3 OF DECLARATION OF TERRITORIAL ASYLUM, ADOPTED 12(US)-2-1.

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6. US PROPOSED DELETION OF ARTICLE 4 (NON-EXTRADITION) ON GROUNDS OF POSSIBLE CONFLICT WITH BILATERAL TREATIES. SUPPORTED BY FRANCE, IRAN, NIGERIA, USSR AND ITALY; OPPOSED BY MEXICO AND SWEDEN. ARTICLE DELETED BY VOTE 12(US)-2-2. NOTE THAT THIS BRINGS NUMBERING OF ARTICLES BACK INTO COINCIDENCE WITH DRAFT CONVENTION.

7. US URGED DELETION IN ARTICLE 4 OF WORDS "AT THE FRONTIER OR" AND "ADMITTED TO OR" ON GROUNDS THAT THESE WERE CONSEQUENT CHANGES, NECESSARY TO BRING ARTICLE INTO LINE WITH ARTICLE 3, AS ADOPTED. PROPOSAL TO DELETE REJECTED 7(US)-8-0. THIS LEAVES THE CONVENTION WITH TWO ADJACENT ARTICLES THAT ARE DIFFICULT TO HARMONIZE. TEXT, WITH OTHER DRAFTING

AMENDMENTS ADOPTED, RADS: "A PERSON SEEKING ASYLUM AT THE FRONTIER OR IN THE TERRITORY OF A CONTRACTING STATE SHALL BE ADMITTED PROVISIONALLY TO OR PERMITTED TO REMAIN IN THE TERRITORY OF THAT STATE PENDING A DETERMINATION OF HIS REQUEST, WHICH SHALL BE CONSIDERED BY A COMPETENT AUTHORITY."

8. COMMENT: IMPRESSIVE PROGRESS TODAY IN GETTING THROUGH THE MOST DIFFICULT ARTICLES SUGGESTS THAT WE MAY BE ABLE TO FINISH TOMORROW. CONTRADICTION BETWEEN TREATMENT OF REJECTION AT FRONTIER IN ARTICLES 3 AND 4 IS APPARENT, BUT WE DO NOT PLAN TO ATTEMPT TO RESOLVE IT BECAUSE (A) THERE ISN'T TIME; (B) GIVEN THE ATTITUDES IN THE COMMITTEE ON THIS POINT THE CONTRADICTION MIGHT WELL BE RESOLVED AGAINST US.
ABRAMS

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NNN

Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: POLITICAL ASYLUM, REFUGEE RELIEF, APARTHEID, MEETINGS, RESOLUTIONS
Control Number: n/a
Copy: SINGLE
Draft Date: 07 MAY 1975
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: n/a
Disposition Approved on Date:
Disposition Authority: n/a
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01 JAN 1960
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1975GENEVA03280
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D750159-1096
From: GENEVA
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1975/newtext/t19750574/aaaacpwj.tel
Line Count: 186
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION SR
Original Classification: UNCLASSIFIED
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 4
Previous Channel Indicators: n/a
Previous Classification: n/a
Previous Handling Restrictions: n/a
Reference: n/a
Review Action: RELEASED, APPROVED
Review Authority: CunninFX
Review Comment: n/a
Review Content Flags:
Review Date: 15 JUL 2003
Review Event:
Review Exemptions: n/a
Review History: RELEASED <15 JUL 2003 by SilvaL0>; APPROVED <17 FEB 2004 by CunninFX>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
05 JUL 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: TERRITORIAL ASYLUM - MAY 6
TAGS: SREF
To: STATE
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 05 JUL 2006